

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|--------------------------------|---|---------------------|
| RONALD WARNE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 07-832-JJF |
| |) | |
| HOME OF MERCIFUL REST SOCIETY, |) | |
| d/b/a KENTMERE NURSING CARE |) | |
| CENTER, |) | |
| |) | |
| Defendant. |) | |

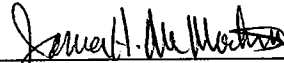
**DEFENDANT’S MOTION TO DISMISS IN PART
PLAINTIFF’S COMPLAINT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Home of Merciful Rest Society, d/b/a/ Kentmere Nursing Care Center (hereafter “Defendant”), hereby moves for the Court to dismiss the Complaint in part because:

1. Plaintiff’s federal retaliation claims (Counts 1-3) must be dismissed because Plaintiff failed to comply with jurisdictional and procedural prerequisites under Title VII to allege retaliation in this action.
2. The state law discrimination claim (Count IV) should be dismissed with prejudice because Plaintiff failed to exhaust his administrative remedies.
3. The state law discrimination/retaliation claims (Count IV) should be dismissed with prejudice because Plaintiff’s claims are barred by the statute of limitations.
4. The good faith and fair dealing claim fails to allege fraud, deceit or misrepresentation, thus it must be dismissed.

WHEREFORE, for the reasons stated above and the reasons set forth in the accompanying Defendant's Opening Brief in Support of Its Motion to Dismiss in Part Plaintiff's Complaint, the Court should grant Defendant's Motion and enter an Order in the form attached, dismissing Plaintiff's Complaint in part with prejudice.

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Attorneys for Defendant

Dated: February 18, 2008